



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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Dennis McLerran
Regional Administrator
U.S. EPA, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

RE: Request for Submission of Information from States Implementing a SIP Approved PSD Program for Greenhouse Gases

Dear Mr. McLerran:

This letter is in response to EPA's request in the Greenhouse Gas Tailoring Rule for submittal of a letter explaining whether Oregon DEQ intends to apply EPA's meaning of the term "subject to regulation" and if so, whether we intend to incorporate that meaning of the term through interpretation, and without undertaking a regulatory or legislative process.

The Oregon Environmental Quality Commission (EQC) cannot automatically adopt EPA's definition of "subject to regulation" by reference. Unlike the administrative rules of some states, the EQC's rules do not purport to automatically incorporate future EPA rules. Oregon courts have interpreted the Oregon constitution to prohibit the incorporation by reference of the future rules of non-Oregon entities, which they consider to be an impermissible delegation of lawmaking authority to a non-Oregon entity. As a result, the EQC can incorporate existing EPA rules by reference through a rulemaking, but it cannot automatically incorporate by reference future rules that do not yet exist as of the time of the EQC rulemaking. Therefore, the EQC would have to undertake a new rulemaking to adopt EPA's definition of "subject to regulation."

DEQ must undertake a regulatory process to include greenhouse gases as a regulated pollutant because our State Implementation Plan (SIP) specifically lists the pollutants subject to the SIP PSD program requirements, and does not include GHGs in that list. DEQ staff will be meeting with your new OR SIP coordinator soon to discuss this and other proposed SIP revisions. The proposed rulemaking package will be sent to your office in mid-September for review. The public notice period will begin in mid-October. Public hearings are scheduled for the week of November 15th. The proposed rules will go to the EQC on February 17, 2011. After rule adoption, DEQ will submit a SIP revision for your approval. We do not expect that any PSD permits will be issued between January 2nd and February 17th, nor do we expect to renew any Title V permits subject to GHG permitting during that period. The short delay between the January 2nd effective date of the Tailoring Rule and the EQC rule adoption date will not have a practical effect on permitting.

Sincerely,

Andrew Ginsburg
Air Quality Administrator

